



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Communications (March 21, 1991 through March 26, 1991)

MEETING DATE: April 3, 1991

PREPARED BY: City Clerk

RECOMMENDED ACTION:

AGENDA ITEM

RECOMMENDATION

J 2b

That the City Council direct the City Clerk to place a review of the City of Lodi nepotism policy (see Resolution No. 90-109 attached, marked Exhibit A) on the agenda for the City Council meeting of April 17, 1991.

BACKGROUND INFORMATION:

The following communication was received between the dates of March 21, 1991 and March 26, 1991.

J 2b

From, Parks and Recreation Commissioner Robert J. Johnson. Mr. Johnson's letter points out that because of the recently implemented City policy regarding nepotism (Resolution No. 90-109) his two sons, despite a long history of part-time employment with the Parks and Recreation Department can no longer be considered for employment. Mr. Johnson requests a review of this policy and it is suggested that this matter be placed on the agenda for the City Council meeting of April 17, 1991.

For your information the following is an excerpt of the City Council meeting minutes of July 11, 1990 when Resolution No. 90-109 was adopted.

"The City Council was advised that in 1985 the City adopted a policy prohibiting the appointment and promotion of certain individuals within the City service. In reviewing the application of that resolution we find that in some cases it may be restrictive and in other cases it does not go far enough.

The present resolution restricts appointment or promotion of employees in the personnel office and in the City Manager's office. This restricts relatives of clerical positions in those departments from working for the City regardless of how well qualified they are.

APPROVED _____

THOMAS A. PETERSON
City Manager

Policy Regarding Nepotism
April 3, 1991
Page two

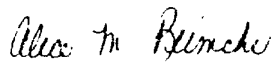
The present resolution is silent in regards to appointment of relatives of the City Council, Department Heads within their department or Advisory Board members within their department.

Staff recommended changes in both of those areas and the elimination of prohibiting promotions. Staff did not propose any changes to the prohibition or appointment or promotion where supervision, safety, security, or morale is at stake.

Personnel Director Joanne Narloch addressed the City Council regarding the matter and responded to questions as were posed.

Following discussion, on motion of Council Member Olson, Hinchman second, the City Council adopted Resolution No. 90-109 entitled, 'Resolution Establishing a Policy in Regard to Employment of Relatives Within the City of Lodi Classified Service and Thereby Rescinding Resolution No. 85-07 Pertaining Thereto.'

FUNDING: None required.


Alice M. Reimche
City Clerk

AMR/jmp

COUNCOM8/TXTA.02J/COUNCOM

RECEIVED

1991 MAR 28 PM 2:33

1311 Midvale Road
Lodi, Ca. 95240
March 25, 1991

ALICE M. REIMCHE
CITY CLERK

Ms. Alice Reimche
Clerk, City of Lodi
City Hall
221 West Pine Street
Lodi, Ca. 95240

Re: Resolution No. 90-109 Dated July 11, 1990

Dear Ms. Reimche:

Attached you will find copies of correspondence forwarded to my attention by Mr. Ron Williamson, Director of the Parks and Recreation Department. In his memo of March 18, 1991, Mr. Williamson points out that, because of a recently implemented resolution (#90-109), my two sons, despite a long history of part time work with the Department, can no longer be considered for employment.

I would like to address the Council on this matter and request that I be permitted to do so at the regularly scheduled meeting set for April 17, 1991.

Briefly, my position is that my sons were employed by the Department well before I was appointed to the Recreation and Park Commission and that "grandfathering" of their employment would not be inappropriate in such a situation. In addition, the resolution speaks of "initial employment". One son has been employed for eight years and the other for five years. This would hardly seem to be "initial employment". Finally, I serve as an Advisory member to the City of Recreation and Park matters. I do not set policy; that is done by the Council. I feel quite strongly that my relationship is such that the City staff or Council can accept or reject any recommendation I may make as a member of the Commission. As such, I fail to see where I have the power to influence what may or may not happen to my sons when they are working in a part time capacity in the Recreation Department.

Accordingly, I request a review of the resolution in the hope that my sons can continue their employment and that I can continue my association with the Commission.

Thank you for your consideration


Very truly yours,


Robert O. Johnson

Lodi Parks and Recreation Department
125 N. Stockton St., Lodi, CA 95240
333-6742 or 333-6744 Field/Facility Conditions

M E M O R A N D U M

TO: Parks and Recreation Commission

FROM: Ron Williamson, Parks and Recreation Director 

DATE: March 18, 1991

SUBJECT: NEPOTISM POLICY INFORMATION/CPRS CONFERENCE FINANCIAL RECAP

Enclosed is the City's nepotism policy which recently came up for discussion and implementation at a department head meeting.

The long and short of it is that, as Commissioners, you serve as advisors to the department; therefore, neither your wife nor any other member of your family can be employed by the Parks and Recreation Department. Your family members may be employed by another City department.

City administration has directed all departments in violation of this policy to correct the situation immediately. If you have any family member who is or planned to be employed by the Parks and Recreation Department, we can no longer honor that employment opportunity.

Also, I will need any receipts and cash you may have from the CPRS Conference in Santa Clara so I can complete our financial recap. Please write down the \$140 and list all of your individual expenses. Do not include spouse's expenses. If you drove your own vehicle to the conference, put in for a tank of gas. Please have all of this to me no later than Friday, March 22.

I hope you all had a good time and enjoyed rubbing elbows with other commissioners and the state's parks and recreation people. Don't forget to drop off the accounting, receipts and cash by Friday. Thanks.

RW/lm

enclosure

CITY OF LODI
MEMORANDUM
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To: City Manager
All Department Heads

From: Bob McNatt, City Attorney

Date: January 22, 1991

Subject: NEPOTISM POLICY

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After our discussion regarding nepotism at the January 21, 1991 Department Head meeting, I checked our files and found the following. On July 11, 1990, the Council adopted Resolution 90-109 (attached) establishing the City's policy regarding family members (spouses, children, siblings, and parents and parents-in-law). It replaced Resolution 85-07 which was stricter regarding disqualifications. This was made necessary due to modifications of State statutes.

Resolution 90-109 prohibits initial employment in any department of specified family members of any Council Member or the City Manager, Assistant City Manager, City Attorney or Personnel Director. As to the Library, it prohibits employment of specified relatives of any Library Board member or of the City Librarian. It further prohibits employment of specified relatives of Department Heads in that same Department.

The second portion of the Resolution covers appointment or promotion where an employee appointed or promoted would supervise, evaluate or dispatch a specified family member. In addition, if 2 employees in the same department marry and one would then supervise or dispatch the other, the Resolution specifies one of the employees must transfer. A word of caution on this point; federal cases have noted that some employers always seemed to transfer the wife. This was found to be discrimination.

The Resolution appears consistent with Government Code Section 12940(3) (attached) which applies only to spouses. I suspect that if spouses can be subjected to this sort of policy, so can other members of the immediate family.

I note that Resolution 90-109 covers "any person or employee". Apparently, that means all employees including part timers, and is not restricted to "members of the classified service" designated in the Lodi Municipal Code chapter on the personnel system (Chapter 2.44).

There is not a lot of case law on this topic and what I found usually involved allegations of discrimination based on marital status. Federal

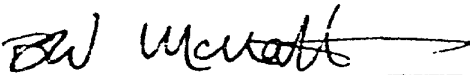
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NEPOTSM3/TXTA.01V

courts have twice dodged the issue of "no nepotism" rules in this context. In Parsons v. Del Norte County (1984) 728 F.2d 1234; cert den 105 Superior Court 158, the Court avoided the issue as "not presented at time of trial." Another Federal court took similar action in Stearns v. Estes (1980) 504 F. Supp. 998 in which that court said California Labor Code Section 1240 (now Government Code Section 12940) may apply where a police officer was threatened with discipline or termination under a "no nepotism" rule because of marriage to a dispatcher. The Federal court sent it to the State court to decide, but there is no reported State appellate court case which followed, so I have no idea what happened in this matter.

The bottom line seems to be that no immediate family member (as defined) of the City Manager, Assistant City Manager, City Attorney or Personnel Director can be hired to work anywhere for the City. The same goes for Councilmembers' families. Further, family members of Department heads cannot work in that Department. Another section generally prohibits hiring or promotion where one family member (Department head or not) will supervise or dispatch another.

Respectfully submitted,


BOB McNATT
City Attorney

BM:vc

attachments

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NEPOTSM3/TXTA.01V

RESOLUTION NO. 90-109

ESTABLISHING A POLICY IN REGARD TO EMPLOYMENT OF RELATIVES
WITHIN THE CITY OF LODI CLASSIFIED SERVICE AND THEREBY
RESCINDING RESOLUTION NO. 85-07 PERTAINING THERETO

It is the policy of the City of Lodi not to discriminate in its employment and personnel actions with respect to its employees, prospective employees, and applicants on the basis of familial or marital status. No employee, prospective employee, or applicant shall be denied employment or benefits of employment on the basis of his or her familial or marital status. This policy applies to the selection of persons for a training program leading to employment in addition to the above-designated persons. The City of Lodi reserves the right to reasonably regulate for reasons of supervision, safety, security, or morale, the working of spouses and relatives in the same department, division, or facility.

Further, the Council finds that in the following situations and pursuant to Government Code §12940(3), the following provisions are necessary:

Marital status is defined as an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state for the purpose of this anti-discrimination policy.

Spouse is defined as a partner in marriage as defined in California Civil Code Section 4100.

Familial status is defined as the state of an individual's specific relatives working for the City of Lodi and shall include spouse, child, brother, sister, parent or parent-in-law.

The City of Lodi shall prohibit the initial appointment to a position within the City of Lodi of any person or employee who has the status of marital or familial relationship with the Lodi City Manager, Assistant City Manager, City Attorney, or Personnel Director, members of the City Council and in the case of Library employees, members of the Library Board or the City Librarian. Further, the City will prohibit the employment in that Department of any person who has status of marital or familial relationship with the Department Head or Advisory Board to that Department.

The City of Lodi shall prohibit the initial appointment of or advancement of any person or employee to any position within any department within the City of Lodi, wherein that person so appointed or advanced would or may in any manner or form, supervise, dispatch, or evaluate; or wherein that person would or may be supervised, dispatched or evaluated by any person within the same department, where, in either event, there exists a marital or familial status factor between said persons.

In the event two persons employed in the same City department marry each other and would thereby fall within the prohibitions listed in this Resolution, one of such employees shall be transferred to a comparable position, if any exists, in another City department.

Resolution No. 85-07 is rescinded upon the adoption of this Resolution.

Dated: July 11, 1990

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I hereby certify that Resolution No. 90-109 was passed and adopted by the Lodi City Council in a regular meeting held July 11, 1990 by the following vote:

Ayes: Council Member - Olson, Pinkerton, Reid and Snider
(Mayor)

Noes: Council Member - None

Absent: Council Member - Hinchman


ALICE M. REIMCHE
City Clerk

90-109

RES90109/TXTA.02J

THE CHANGING WORKPLACE

Co-Worker Couples Are Now OK

By Sylvia Rubin
Chronicle Staff Writer

When the two Concord cops began dating six years ago, they assumed it was against the rules. They treated each other almost like strangers around the office. There were no stolen kisses in the corridors, no hand holding.

"We kept our engagement a secret for six months," said Nancy Jenny, now a detective.

Now, nearly five years after their marriage — and five more weddings in the department, not

to mention four sets of brothers — her superiors have thrown up their hands and are rewriting the rules about members of the same family working together.

And no wonder. Times have changed since many companies banned such working relationships under so-called nepotism policies out of fear that they could lead to favoritism.

Now, employers are realizing that such relationships can go on with no harm to their firms. To many, the whole concept has become as outdated as TV wives

who wear pearls to the dinner table.

"There are so many family-run businesses now, in which the head of the companies hire their friends or relatives or even pets, they are not married to but involved with, that the word 'nepotism' no longer applies," said Eric Flamholtz, professor of management at the University of California at Los Angeles and the author of two books. "It's an anachronistic concept."

The reality is that the office

Page A4 Col 1

Co-Workers Becoming Couple

Growing number of employees meet mates at work

From Page 1

has become the pool from which we choose friends — and lovers.

"The issue really is that an increasing percentage of people are spending a great deal of their lives around their profession," Flamholtz said. "People work with each other, get involved with each other. It's a widespread phenomenon. It's an issue of the '90s."

In researching her 1989 book, "Office Romance: Love, Power & Sex in the Workplace," Lisa Mainiero, an associate professor of management at the School of Business at Fairfield University in Connecticut, found that policies are being revised at firms across the country as more couples meet on the job and marry. Even more commonly, she said, "the policy is still on the books, but it's not being executed. Management is looking the other way."

Examples of this changing attitude are everywhere. In the academic world, universities are deluged with so many husband-wife applicants that they might be out of business if they did not accept them as a team.

"Let me put it this way," said Claude Fisher, former chairman of the sociology department at UC Berkeley. "Husband and wife professors have become so common it's a problem. You want to hire Professor A, the best applicant you saw, but the spouse is also a professor. What do we do with her? If you can't arrange to hire them both, you might lose Professor A."

Some universities, such as Stony Brook on Long Island and Northwestern in Chicago, "go out of their way to hire couples. It's to their advantage since there are so many applying," Fisher says.

Married in Space

The issue has even reached outer space. NASA is reviewing its policies to see if newlywed astronauts Jan Davis and Mark Lee can fly a 1992 space shuttle flight together.

"We've never had to deal with this before," said Barbara Schwartz, a spokeswoman for the National Aeronautics and Space Administration. "It's a first."

According to Howard Mitchell, professor of human resources and management at the Wharton School in Philadelphia, many policies presume you are guilty before the trial. "I've seen nepotism policies at companies established in a blind way, before there wasn't any evidence of favoritism. It seems to me that in those cases, the people don't have the same right as an alleged criminal — you shouldn't be judged guilty without evidence of guilt."

Not all employers share this view. If you work for the city of Albany in the East Bay, you had best look for romance outside the office.

A strict city policy, in effect since 1981, forbids married couples



By Lisa Mainiero/The Chronicle

Concord Detectives Nancy and Paul Jenny kept their engagement a secret for six months because of nepotism regulations

from working in the same department. If you are unlucky enough to fall in love and marry, one of you has to transfer to another department. If there are no openings, and you cannot be placed within 120 days, you are fired.

Separate Departments

In the workplace, it is usually better to keep husbands and wives (and sons and daughters) in separate departments, said Mainiero. Although she believes in office romances, Mainiero thinks it is healthier for husbands and wives not to work too closely together.

"What I tell companies is that their nepotism policy should not permit married couples in a boss-subordinate relationship," she said. "My research showed that when husbands or wives reported to one another, it opened a Pandora's box in the office."

"Co-workers would assume some sort of favoritism was taking place even if the couple was bending over backward to avoid that assumption. It destroyed morale in the offices I studied."

In an extreme case, a multimillion-dollar San Francisco company was split apart by the feuding owners, Doug and Susie Tompkins, who were on their way to divorce court as their company was falling apart.

He was chief executive and she was design director of Esprit de Corps, the trendy clothing company that they founded in 1968, early in their marriage. Over the years, as their vision for the company began to differ, their marriage also soured, resulting not only in a serious morale problem around the office but also in tens of millions of dollars in lost profits.

Doug Tompkins recently resigned from the firm, and Susie Tompkins came back as creative director after a two-year absence.

Spouses seem to fare better in lateral relationships, Mainiero said. "It becomes even more ideal if the couples work in separate departments. I had one case where the co-workers were pushing the couple to get married!"

Things were different 13 years ago at KRON-TV when Terry Lowry and Fred LaCose, longtime San Francisco TV news reporters, began dating.

"It just wasn't done," said LaCose. Nobody knew they were item, and the jumpy couple was terrified that they would be fired out.

After he asked Lowry to marry him, LaCose also checked in with his boss. "I practically asked for Terry's hand in marriage, damn near," he said. "We were worried about losing our jobs."

Instead, the station put them on the air together to anchor a weekend news, a sight that's come more common lately (in Los Angeles, Bree Walker and J. Lamplie anchor the news together, as do another married ne team in Boston).

"I guess they figured it was cute," Lowry said. "In fact, I believe it did boost the ratings," called LaCose.

At San Francisco General Hospital, Dr. Paul Volberding and wife, Dr. Mary Cooke, have overlapping interests but do not work together.

"I always thought it would very dull to be married to another physician and come home and talk about surgery, disease and death," Cooke said. "The reality is different. It's nice not to have to bribe your partner up from ground level when you talk about work."

But, she said, "I would not want to work for him, as his wife. It would complicate the situation different ways."

Detective Nancy Jenny thinks differently.

She and her husband, Paul, both tested for sergeant recent. "Neither one of us made it this time, but I don't think either of us would have a problem if I outranked the other. Anyway, I have a deal: Whoever makes a sergeant first, that person has to let the other one out of town for a weekend."

Airliner Turns Back

Chicago

Northwest Airlines' Flight 5 from Minneapolis to Miami, turned to Minneapolis airport yesterday soon after takeoff after what appeared to be a goose caused one of its engines to shut down according to the Federal Aviation Administration here.

EXHIBIT A

RESOLUTION NO. 90-109

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Absent: Council Member - Hinchman


ALICE M. REIMCHE
City Clerk

90-109

RES90109/TXTA.02J